



August 7, 2008

A. Jay Kenlan
Kenlan Schwiebert Facey & Goss, P.C.
P.O. Box 578
Rutland, VT 05702-0578

Re: Jurisdictional Opinion #3-125, Green Mountain Horse Association ("GMHA")
Woodstock, Restoration and Maintenance of Riding Ring

Hello Jay;

This is in response to your letter dated July 31, 2008, requesting an opinion on whether or not the proposed maintenance and restoration work on the riding ring at the GMHA's Upwey Farm property in South Woodstock requires an Act 250 permit. Pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(A), you have requested a final determination on the question. It is my opinion that the GMHA is proposing maintenance and restoration of an existing development, and therefore, does not require an Act 250 permit.

Facts and Documents

1. I am relying on the facts and site plan contained in your letter to me dated July 31, 2008. Exhibit 1.
2. The GMHA has owned and operated riding, training, and stable facilities for more than 80 years at its property at Upwey Farm. The farm is located in South Woodstock off Route 106. The property is more than one acre in size.
3. Since around 1960, GMHA has maintained a riding ring and associated trailer parking areas and horse training areas (collectively, the "Riding Ring") in an area off Morgan Hill Road, just south of Kedron Brook. This area is shown on a site plan (sheet C-1), prepared by Bruno Associates, dated January 30, 2008 (Exhibit 2).
4. GMHA proposes to make improvements to the riding ring that will make the area more stable, safer and less prone to ruts and muddy conditions. Improvements include installing a proper base support, drainage and surface material in the riding ring area.
5. There will be no expansion of the area. The only change will be that the surface of the existing riding ring area will be improved. The appearance, dimensions and location of the riding ring will remain essentially unchanged.

6. As required by 10 V.S.A. § 6007(c) for a “final determination”, GMHA has provided a service list of adjoining property owners and others who would likely be able to demonstrate a particularized interest protected by Act 250 that may be affected by this Jurisdictional Opinion.
7. The Town of Woodstock has not adopted both zoning and subdivision bylaws.

Analysis

8. 10 V.S.A. § 6081(a) requires that a land use permit be obtained prior to commencement of construction on a development or prior to commencement of development.
9. Pre-existing developments are exempt from Act 250 unless there has been or is planned a substantial change to the development. 10 V.S.A. § 6081(b)
10. 10 V.S.A. § 6001(3)(A)(ii) defines “development,” in part, as the construction of improvements for commercial purpose on more than one acre in a town that has not adopted both zoning and subdivision bylaws.
11. Act 250 Rule 2(C)(8) defines “pre-existing development,” in part, as any development in existence on June 1, 1970.
12. Act 250 Rule 2(C)(7) defines “substantial change,” in part, as any change in a pre-existing development which may result in significant impact with respect to any of the criteria that Act 250 protects.

The GMHA has operated this riding ring area for 80 years, which certainly qualifies as “pre-existing development” status. The proposed improvements are to correct an existing condition and are routine maintenance and repair of the existing development. The Environmental Board *In re: Atlantic Cellular Co., L.P. and Tinkers Inc.*, Declaratory Ruling #340 (Findings of Fact and Conclusions of Law and Order at 9)(July 11, 1997) held that “repair or routine maintenance does not alter an existing development, but prevents or eradicates alteration to an existing development which has occurred or would otherwise occur over time through normal wear and tear.”

The proposed activities at the riding ring are to improve a situation that, without the improvements, would only get worse under “normal wear and tear.” The improvements to the surface of the riding ring are routine maintenance and repair of an existing development and are not a “substantial change” to the “pre-existing development.”

This opinion applies only to the activities described and not the entire GMHA facilities. My opinion of no jurisdiction is contingent upon the accuracy of the facts provided in your letter and the site plan attached to this opinion. While the subject activities are exempt from Act 250 jurisdiction, the requestors and their successors and assigns are

A. Jay Kenlan, Esq.
August 7, 2008
Page 3

reminded that this opinion does not exempt the proposed activities from such other state or local permits which may be required.

Conclusion

The proposed maintenance and repairs to the GMHA riding ring at Upwey Farm do not trigger jurisdiction, and therefore, do not require a Land Use Permit under Act 250.

Reconsideration or Appeal

Persons who qualify as parties pursuant to 10 V.S.A. § 6085(c)(1)(A) through (E) may request reconsideration from the district coordinator within 30 days of the mailing of the opinion pursuant to Act 250 Rule 3(A). The opinion may be appealed to the Environmental Court within 30 days pursuant to 10 V.S.A. § 8504(a).

Sincerely,

Linda Matteson /s/

Linda Matteson
District 3 Coordinator

c: Certificate of Service

Encl: Letter dated July 31, 2008 (Exhibit 1)
Site Plan, dated 1/30/08 (Exhibit 2)

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(A).

Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address. Any appeal of this decision must be filed with the clerk of the Environmental Court within 30 days of the date of issuance, pursuant to 10 V.S.A. Chapter 220. The appellant must attach to the Notice of Appeal the entry fee of \$225.00, payable to the State of Vermont. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Montpelier, VT 05620-3201, and on other parties in accordance with Rule 5(b)(4)(B) of the VRECP.

For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The Environmental Court mailing address is: Environmental Court, 2418 Airport Road, Suite 1, Barre, VT 05641-8701. (Tel: 802-828-1660)

Vermont Natural Resources Board Notice of Act 250 Jurisdictional Opinion

On August 7, 2008, the District 3 Coordinator issued Act 250 Jurisdictional Opinion #3-125 pursuant to 10 V.S.A. 6007(c) and Act 250 Rule 3(A), in response to a request made in a letter dated July 31, 2008, from A. Jay Kenlan, Esq. The Jurisdictional Opinion made a finding of no Act 250 jurisdiction over the proposed maintenance of the existing riding ring at the Green Mountain Horse Association's property at Upwey Farms, located off Morgan Hill Road in South Woodstock, Vermont. The opinion found the activities exempt pursuant to statute and rule.

Copies of this jurisdictional opinion have been served on all persons specified in 10 V.S.A. 6007(c) and Act 250 Rule 3(C). A copy of the jurisdictional opinion may be obtained by contacting the District Coordinator at the address/telephone number below. Reconsideration requests are governed by Act 250 Rule 3(C)(2) and should be directed to the District Coordinator at the address listed below.

Any appeal of this decision must be filed with the clerk of the Environmental Court within 30 days of the date of issuance pursuant to 10 V.S.A. Chapter 220. The appellant must attach to the Notice of Appeal the entry fee of \$225.00, payable to the State of Vermont. The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The address for the Environmental Court is: Environmental Court, 2418 Airport Rd., Suite 1, Barre, VT 05641-8701. (Tel. # 802-828-1660).

Dated at Springfield, Vermont this 7th day of August, 2008.

Linda Matteson /s/

Linda Matteson, District Coordinator
District 3 Environmental Commission
100 Mineral Street, Suite 305
Springfield, VT 05156-3168
802-885-8843

